

BHP Billiton Diamonds Inc.



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Rick Meyers,
Vice President, Diamonds,
The Mining Association of Canada
(rmeyers@mining.ca)

Dear Rick:

Re: Northern Regulatory Improvement Initiative – Comments on Neil McCrank questions from the January 28, 2008 meeting in Vancouver

At the January 28th session Mr. McCrank posed a series of questions, which were partially verbally addressed on our behalf by Chris Hanks. BHP Billiton would like to take this opportunity to provide more complete written responses.

- 1. Is the current regulatory regime in the Northwest Territories working well enough to allow for, or enable, responsible resource development, or should this regime be fundamentally restructured?***

BHP Billiton response: BHP Billiton believes that investment in the NWT is hampered by a regulatory regime that suffers from poorly drafted and ineffectively implemented environmental legislation. It is our opinion, however, that by review, selective amendment and full implementation of the Mackenzie Valley Resource Management Act (MVRMA) many of the problems could be solved. Our concerns include procedural issues resulting in adding complexity to the process, lack of proper review of referrals to environmental assessment, and timeliness of process. The MVRMA has never been fully implemented.

Further, in the mid-1990's, there were gaps in the environmental legislation and regulatory process that were plugged at that time, by makeshift measures such as Environmental Agreements and Independent Monitoring Agencies. While BHP Billiton was involved in the creation of some of these arrangements we have always believed that these steps were stop gap measures that would be transcended by the MVRMA when it was passed into law and fully implemented. This did not happen and today industry must not only comply with the laws, regulations and policies of Canada but also deal with contractual Environmental and Socio-economic Agreements and "watch-dog" agencies that lack true official sanction. These add on processes now create overlapping requirements in areas such as security deposits that often duplicate regulated processes.

2 What changes would industry recommend to ensure: (a) greater accountability in decision-making; (b) consistency and predictability in decision-making; and (c) more timely decision-making?

BHP Billiton response: The review of the MVRMA should include governance of the various Land and Water Boards created by the Act. The use of quasi-judicial boards as instruments of public government has made processes under the act very rigid and difficult for both proponents and stakeholders. The quasi-judicial powers granted the Boards would seem more appropriate to an appeal system instead of a front line process for handling land and water use applications.

The Boards often contain people who while wise in the needs of their communities, lack the technical expertise necessary to understand the projects they are evaluating. There is a need to balance community appointments with those based on technical expertise. Board appointments should be based on creating balance across the full mandate of the MVRMA . There is an ongoing need for Board training.

Delays in process are often caused by government interveners not being prepared. Government must learn to live with in the time frame of the permitting / assessment processes. The recent request in Nunavut by DIAND for a 3 month extension in the Bathurst Inlet Port and Road Review is a good example of poor government performance.

Aboriginal groups often lack the capacity to fully participate in a timely manner and this is particularly true in areas without settled land claims. Government needs to work with these groups to make sure that they have the resources and capacity ahead of applications in order to participate fully.

3. Is there a need for to ensure a more coordinated response by government departments? If so, could this be addressed by establishing a body that would coordinate all of the relevant federal and territorial government departments that are involved in the regulatory regime?

BHP Billiton response: In the current system each federal and territorial government department speaks as a separate intervener. Canada needs to speak with one voice. The GNWT needs to speak with one voice.

DIAND is in conflict of interest. The same officials who intervene for DIAND at the application phase then review the draft licences sent by the Boards to the Minister.

4. Are there policy gaps, either major or minor, that government could fill by changes to the applicable legislation, particularly the Mackenzie Valley Resource Management Act? Potential examples are: (a) regulations to set effluent quality standards and receiving water standards for mining operations; (b) the establishment of technical advisory committees to assist the land and water boards; and (c) regulations to define the requirements for environmental effects monitoring by licence holders.

BHP Billiton response: There is a need for a coordinated approach to effluent discharge quality standards, environmental effects monitoring programs and authorization of processed kimberlite containment areas for the diamond sector such as is available for metal mines under the MMER. A new initiative is being undertaken by Environment Canada to address this issue and should be completed prior to other, overlapping initiatives that are simultaneously being undertaken independently by INAC.

The current MVRMA and Federal Real Property Acts do not allow a proponent to adequately secure tenure. Under the current system tenure is driven by Land Use Permits which are issued for 5 years and can be renewed for an additional 2 years before re-application is required. Seven years is not adequate to secure an investment in a 1.3 billion dollar EKATI mine with a 20 year mine life or a 200,000 million dollar access road such as the potential upgrade that is being considered for the Seasonal Overland Route to replace the lower end of the current Tibbitt to Contwoyto Winter Road..

Short-term water licences are not effective for long term operations that are designed and built around their original licence requirements. While the NWT Waters Act allows 20 year water licence terms, the Boards rarely give over 7 year terms. Water Licences renewals for the diamond mines to retain their existing terms are taking 18 to 24 months and costing in excess of 2 million dollars.

5. *Are specific amendments or clarifications required to the governing legislation, for example, the term "might cause" as used in the Mackenzie Valley Resource Management Act?*

BHP Billiton response: The process under the MVRMA for referring a development proposal to environmental assessment needs to be reviewed. At current if a stakeholder listed under the act refers a project to assessment the Mackenzie Valley Environmental Impact Review Board has no option but to assess the project. There must be a way to prevent frivolous referrals.

6. *Are there other specific issues that need to be addressed, for example: (a) the adequacy of community consultation; (b) capacity and funding issues related to the MVRMA boards; or (c) the use of regional environmental assessments in place of specific assessments of individual development proposals?*

BHP Billiton response: A lack of clarity regarding the requirements for consultation of Aboriginal people is causing delays and burdening industry with requirements that are more appropriately the responsibility of government.

The Mackenzie Valley Land and Water Board and the Wek'eezhii Land and Water Board require community consultation by the proponent prior to submission of an application. DIAND intervenor funding particularly in areas without settled land claims, does not kick in until an application is filed. This lack of process coordination places industry in the middle of a disagreement between the Aboriginal peoples and government.

Regional assessments for activities such as mineral exploration should be used. The effects of one diamond drill program are similar to the next one. Regional assessment of exploration in combination with completed land use plans would greatly facilitate the process and remove some of the burden from the system.

7. Are there implementation issues that need to be addressed to improve the regulatory system?

The failure of the government to implement Part 6 of the Act which amongst other things deals with cumulative effects is a problem for industry and one example of implementation issues.

If you have any queries regarding the responses detailed in this letter, please call Laura Tyler at 669-6156 for further information or detail.

Sincerely,

BHP Billiton Diamonds Inc.

A handwritten signature in black ink, appearing to read 'Ricus Grimbeek', with a stylized flourish at the end.

Ricus Grimbeek
President and Chief Operating Officer
EKATI Diamond Mine

c: Mike Vaydik
Philip Bousquet
Eric Denholm
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